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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,008	08/24/2000	Carlos Ernesto Koster	ASA-101	5469

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EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 01/30/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/623,008

Applicant(s)

KOSTER, CARLOS ERNESTO

Examiner

MONZER R CHORBAJI

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

This final office action is in response to the request for reconsideration received 09/03/02

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banks et al (U.S.P.N. 5,300,265) in view of Fiorenzano, Jr. (U.S.P.N. 5,326,543).

With respect to claims 1, 3, and 5, Banks et al discloses a method for the treatment of goods with carbon dioxide and nitrogen (col.1, lines 44-46 and col.5, lines 36-40) at a location of goods (col.5, lines 53-55) by washing (col.1, lines 54-56), filtering (figure 1, 12 and 13), cooling (figure 1, 7 or 9 or 10), and catalyzing of other gas sources (figure 1, 3 and 5). Furthermore, Banks teaches that the exhaust of any engine can be used (abstract, lines 1-2 and col.4, lines 62-64). However, Banks fails to disclose explicitly the use of the exhaust of ships or boilers. Fiorenzano, Jr. discloses the use of

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nitrogen and carbon dioxide gases to treat goods located in ships (col.1, lines 14-15 and lines 43-47). Furthermore, Fiorenzano, Jr. does not specify any type of ship, and then ships that utilize motive power are included. However, a boiler is an integral part of a motive power. Thus, a person having ordinary skill in the art of treating goods would have been motivated to utilize the teachings of Banks to Fiorenzano, Jr. so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, Jr., col.1, lines (16-18)).

### ***Response to Arguments***

4. Applicant's arguments filed 09/03/2002 have been fully considered but they are not persuasive.

On page 2 of the response, applicant argues, "that the use of nitrogen and carbon dioxide gases is a part of the prior art which Fiorenzano does not use". Fiorenzano discloses that the use nitrogen and carbon dioxide as reducers of aerobic organisms is known in the treatment of goods regardless of whether this teaching is part of prior art or part of the invention. Fiorenzano teaches away from using toxic chemicals that present health risks with regard to chemicals that reduces the amount of microorganisms and insects by intoxication (col.1, lines 48-48 and lines 51-52). However, Fiorenzano teaches that the other methods have limited efficiency (col.1, line 50). This statement does not constitute "teaching away from the use of nitrogen and carbon dioxide" rather suggests that every method of treating goods has its advantages and has its drawbacks. Furthermore, the reason Fiorenzano was applied is to show that it is known to treat goods located in ships by using nitrogen and carbon dioxide

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gases (col.1, lines 14-15 and lines 43-47). As a result, one having ordinary skill in the art would have been motivated to modify Banks method to include using the exhaust of ships so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, col.1, lines 16-18).

On page 3 of the response, applicant argues, "a combination of the references fails to establish that the motivation for combining Banks and Fiorenzano comes from the art itself". Both references teach that nitrogen and carbon dioxide gases are used to treat goods such that Banks discloses that the exhaust of any engine can be used as a source for carbon dioxide and nitrogen whereas Fiorenzano teaches of treating goods in ships. As a result, one having ordinary skill in the art would have been motivated to modify Banks method to include using the exhaust of ships so that the storage of large quantities of agricultural products as on a ship is preserved (Fiorenzano, col.1, lines 16-18).

On page 3 of the response, applicant argues, "Fiorenzano does not teach that its electrical heating coils or UV lamps are in any way related to a source of motive power for a containment vessel of boiler operations for an oil extraction operation". The only reason Fiorenzano was applied is to show that it is known to treat goods located in ships by using nitrogen and carbon dioxide gases (col.1, lines 14-15 and lines 43-47) and not for its electrical heating coils or UV lamps as a source of motive power for vessel or boiler operations for an oil extraction operations. In addition, boilers are integral parts of a motive power on transport ships since Fiorenzano discloses treating goods in ships in general. With regard to using the exhaust of a boiler in the oil

extraction plants, Banks teaches that the exhaust of any type of engine can be used to generate carbon dioxide and nitrogen gases to treat goods (col.4, lines 62-68). Boilers inherently contain exhaust outlets since they combust fuels to generate steam. It would have been obvious to one having ordinary skill in the art to use exhaust gases from boilers in oil extraction or any type of plant to treat goods since Banks discloses that any type of engine's exhaust can be utilized to generate carbon dioxide and nitrogen gases in the treatment of goods. In addition, since Banks teaches that the exhaust of any combustion engine can be utilized in the treatment of goods, then using the exhaust of boilers in oil extraction plants is obvious and does not produce any unexpected results.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

6. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MONZER R CHORBAJI** whose telephone

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number is (703) 305-3605. The examiner can normally be reached on M-F 8:30-5:00.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-7719 for After Final communications.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Monzer R. Chorbaji *MRC*  
Patent Examiner  
AU 1744  
May 19 2002

*Robert J. Warden, Sr.*  
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